U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

JUL 09 2004

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a bible teacher. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had failed to establish that it had extended a valid job offer to the beneficiary, or that it had the ability to pay the beneficiary a wage.

On appeal, counsel submits a brief.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a bible teacher throughout the two-year period immediately preceding that date.

In a letter submitted with the petition, the pastor of the petitioner church, Reverend Eronides DaSilva, stated that the beneficiary had been voluntarily teaching classes in Sunday school and at the petitioner's subsidiary ministry, the Bethany Theological Seminary. Reverend DaSilva also indicated that the beneficiary taught classes of "New Testament survey." In a request for evidence (RFE) dated June 19, 2002, the director requested detailed information regarding the beneficiary's prior work experience, including the duties, hours of work and compensation. In response, the petitioner specified additional roles played by the beneficiary in the church but provided few additional details of the beneficiary's prior work experience as a Bible teacher. Reverend DaSilva stated that the beneficiary taught different subjects at the seminary and assisted the seminary as secretary. However, other than Portuguese, the petitioner did not specify the courses taught by the beneficiary, and failed to specify the hours that the beneficiary worked. According to the petitioner, the beneficiary provided her services free of charge to the petitioner and was supported by her family in Brazil.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was

a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, counsel argues that the beneficiary, although not ordained, serves as a minister with the petitioner church. This argument is without merit and inapplicable as no evidence suggests that the beneficiary is a minister or has been offered a position as a minister with the petitioner. Although the record contains evidence that the beneficiary received a diploma in 1999 for completing a basic course in theology from the petitioner, no evidence establishes that the receipt of such a diploma conveys the title of minister upon graduation. Furthermore, regardless of the nature of the proffered position, the record does not contain sufficient evidence to establish the beneficiary's qualifying prior experience.

Additionally, although the petitioner states that the beneficiary's family supported her, no evidence was submitted to corroborate the petitioner's statements. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner submitted no statements or other evidence from the beneficiary's family to establish the nature or amount of support that they provided to the beneficiary. Additionally, the petitioner stated that it provided the beneficiary with food, shelter and transportation. This statement is inconsistent with the petitioner's statement that her family supported the beneficiary. The petitioner further provides no evidence of its support of the beneficiary, such as receipts of monetary disbursements on behalf of the beneficiary, or evidence that the petitioner maintained housing that was made available to the beneficiary.

The petitioner has not established that the beneficiary was engaged in the occupation during the two years immediately preceding the filing of the visa petition.

The petitioner must also demonstrate that a qualifying job offer has been tendered.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner stated that the beneficiary would be required to work 40 hours per week and would be compensated at a rate of $300.00 per week. The petitioner stated that the beneficiary had been serving in the position for three years. The evidence provided is insufficient to determine that the duties of the position qualify

it as a religious occupation. Although in his initial letter, Reverend DaSilva stated that the beneficiary taught classes on the New Testament, his letter submitted in response to the RFE provided no further details of the proffered job responsibilities. Reverend DaSilva indicated that the beneficiary taught language courses; however, teaching language courses is primarily a secular occupation. The evidence submitted does not establish that the petitioner has extended a valid job offer in a religious occupation.

A petitioner must also demonstrate its ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner submitted a copy of a financial statement reflecting its income and expenses for the period January to December 2000. In response to the RFE, the petitioner submitted a copy of a financial statement for the period January to December 2001 and copies of monthly bank statements for the period January through July 2002.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. Furthermore, the financial statements submitted by the petitioner reflect that it had a net balance of $544 in 2000 and $197 in 2001. The evidence does not establish that the petitioner had the ability to pay the proffered salary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.